



© David Levenson/Alamy Stock Photo

Hair today, gone tomorrow?

Mark Pawlowski sets out the case for abolition of the wig as part of our court dress

It was FW Maitland (writing in 1883) who referred to the wig as 'the silliest adornment that the human head has yet invented'. Earlier still, Lord Denman CJ considered the wig 'the silliest thing in England'. Today, many consider the abolition of the wig as an important and necessary step towards creating a more user-friendly system of justice in this country. In a short article appearing in this journal entitled 'A new look for the Bar' (*NLJ*, 3 February 1984, at p110), Brian W Haines wrote: 'Let us start with the uniform. Is there really any need for wigs and gowns, to say nothing of that 1920s abomination the winged collar? These clothes do nothing to enhance the dignity of the law; they merely serve to emphasise just how out of touch the courts are with ordinary men and women. If a barrister can appear with dignity before a bench of magistrates in an ordinary suit then there can be no reason why he should not appear in any other court in the same clothes.'

Historical foundation

The forms of judicial costume were prescribed in England by the Judge's Rules made in 1635. Wigs were not part of the legal uniform but simply a fashion in head-dress that was once universal for 'gentlemen of quality'; and was given up by all of them except bishops, judges and barristers, towards the end of the 18th century (bishops gave them up in 1832). What is significant is that, throughout Europe, the wig was abandoned as part of court dress as its wearing, as a general fashion, ceased. Only in England has the forensic use of wigs continued to the present time. What is, perhaps, most surprising is the requirement made of women to wear wigs, given that this was simply an unchanged masculine fashion in hairdressing. In the words of Helena Kennedy: 'To be the very model of

a perfect lady barrister means looking as indistinguishable as possible from one's male colleagues': see, *The Bar on Trial* (1978, edited by Robert Hazell), at p159.

Cost of court dress

Those who favour abolition also point to the incredibly high cost of wigs and gowns, tunic shirts, wing collars, collar studs, collarettes, etc used by counsel in court and the difficulties experienced by many new (young) entrants to the Bar in meeting the cost of these items. It seems pertinent to observe that items of clothing used for court work (for example, black suits and dresses, black shoes, white shirts and blouses, etc.) are not deductible expenses for the purposes of income tax: see *Mallalieu v Drummond (Inspector of Taxes)* [1983] 2 AC 861.

Reasons for retention

Those who favour the retention of the wig argue that the wearing of an appropriate uniform by counsel in court adds to the dignity and formality of the proceedings and, more importantly, makes a contribution to a sense of anonymity of the individual advocate. This levelling argument is, however, unconvincing. It is, perhaps, significant that in most European jurisdictions, the court dress common to both judges and advocates is a black gown worn over a dark suit without head covering of any kind. The point here is that, with all the other essentials of a dignified proceedings being present, no sense of diminished dignity or formality is experienced because of the lack of a formal headdress. Moreover, the uniformity argument fails to recognise that it is the qualities of the individual, and the degree of their ability and persuasiveness, which will differentiate them from other counsel, notwithstanding that all, alike, wear wigs.

Criminal barristers often argue that wigs and gowns give them helpful anonymity. There is little evidence, however, supporting the notion that the wig necessarily hides the identity of counsel and makes it more difficult for criminal defendants to identify them outside the courtroom. The argument also does not readily explain why so many other legal systems manage with no more than simple robes as appropriate attire in both civil and criminal trials.

A more subtle argument, however, for the retention of the wig (and legal uniform generally) lies in the notion that court dress represents a language of its own in terms of a continuity of development of responsibility. In other words, wigs and robes clothe the individual with the corporate authority of the law. They remind the advocate that he or she is not an isolated individual acting for themselves alone, but that their task is one which, in the light of legal history, is weighty with centuries. In this sense, the wig and traditional gown continue to serve a unique and valuable purpose.

Conclusion

There is no justification, it is submitted, for retaining the wig as part of court dress on the grounds of tradition alone. Arguments based on the formality and dignity of court proceedings seem also unconvincing. However, if court dress is important in clothing the advocate with a sense of corporate authority and responsibility, this can be achieved just as well by the adoption of a more user-friendly form of court attire. The retention of a black robe (without a wig, starched collars and bands) seems an entirely sensible compromise in line with our European brethren.

NLJ

Mark Pawlowski is a barrister and professor of property law, School of Law, University of Greenwich.